

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR (1) A GENERAL)	
ADJUSTMENT OF ITS RATES FOR ELECTRIC)	CASE NO.
SERVICE; (2) AN ORDER APPROVING ITS 2017)	2017-00179
ENVIRONMENTAL COMPLIANCE PLAN; (3) AN)	
ORDER APPROVING ITS TARIFFS AND RIDERS;)	
(4) AN ORDER APPROVING ACCOUNTING)	
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND (5) AN ORDER)	
GRANTING ALL OTHER REQUIRED APPROVALS)	
AND RELIEF)	

ORDER

This matter arises upon the motion filed by Riverside Generating Company, LLC (“Riverside”) on July 14, 2017, requesting to intervene in this proceeding. Riverside is a merchant generator with five natural gas-fired generating units with a combined capacity of 836 megawatts that are located on two sites in Lawrence County, Kentucky. Riverside sells the output of its facilities into the wholesale marketplace of PJM Interconnection, LLC (“PJM”). Riverside’s generating sites are interconnected with Kentucky Power Company (“Kentucky Power”). Additionally, Riverside is a customer of Kentucky Power, receiving station power service under Kentucky Power’s Tariff N.U.G. (Non-Utility Generator). In its motion, Riverside points out that Kentucky Power incorrectly stated in its application that there are no customers currently on Tariff N.U.G.¹

¹ Application, Direct Testimony of Alex E. Vaughn (filed July 20, 2017), at 25.

As a basis for its motion to intervene, Riverside states that it has a special interest in the proposed textual changes to Tariff N.U.G. Riverside states that it has engaged in discussions with Kentucky Power regarding interpretation of the current language of Tariff N.U.G. regarding the applicability of Tariff N.U.G. to Riverside's Lawrence County facilities. The discussion centers on the remote self-supply provision in the "Special Terms and Conditions" section of Tariff N.U.G.

In its application, Kentucky Power proposes, *inter alia*, to revise the text of the remote self-supply provision of Tariff N.U.G. Below is the proposed revision, with current language that Kentucky Power proposes to delete struck through and language Kentucky Power proposes to add in italics:

Customers desiring to provide Startup and Station Power from ~~commonly owned~~ *other* generation facilities, *owned by the same individual business entity* that are not located on the site of the customer's generator (remote self-supply), shall take service under the terms and conditions contained within the applicable Open Access Transmission Tariff ["OATT"] as filed with and accepted by the Federal Energy Regulatory Commission ["FERC"].

Riverside asserts that the proposed revisions affect the future applicability of Tariff N.U.G. to Riverside and to other merchant generators. Riverside further asserts that Kentucky Power provided little explanation or justification for the proposed Tariff amendment, and that permitting Riverside to intervene would result in a better-informed Commission.

On July 21, 2017, Kentucky Power filed a response in opposition to Riverside's motion for intervention. Kentucky Power argues that Riverside does not have a special interest in this case because the proposed changes to Tariff N.U.G. affect the current discussions between Kentucky Power and Riverside with regard to the applicability of

the remote self-supply provision of the Tariff. Kentucky Power explains that Riverside and Kentucky Power have been in discussions since the spring of 2017 regarding the eligibility of Riverside's facilities for remote self-supply, in particular whether, under the language of the Tariff, Riverside's facility in Lawrence County is one facility or two adjacent facilities. Kentucky Power avers that the discussions are not related to the common ownership of the facilities. Kentucky Power states that it is not proposing to change the language relating to the "located on the same site" eligibility requirement, and that the dispute is unrelated to the issues presented in this proceeding. For this reason, Kentucky Power argues that Riverside does not have a special interest in this proceeding and that adding an unrelated issue is likely to complicate and disrupt the rate proceeding.

Kentucky Power further argues that Riverside's participation as a party would unduly complicate and disrupt the proceeding because it is a direct competitor of Kentucky Power in the PJM wholesale market, which would impact Kentucky Power's ability to provide confidential information in response to data requests.

A hearing was held on July 24, 2017, to assist the Commission in reaching a decision on pending motions to intervene. At the July 24, 2017 hearing, the Commission received testimony in support of Riverside's request to intervene from George Slansky, LS Power's asset manager. LS Power owns and manages Riverside and its facilities. Mr. Slansky testified that the proposed Tariff amendments impact Riverside's ability to take service under FERC's OATT, and alleged that Kentucky Power was attempting to circumvent negotiations by changing the applicability of Tariff N.U.G. to Riverside.

At the hearing, Counsel for Riverside asserted that there are two distinguishable concerns at issue: to whom Tariff N.U.G. applies and how it applies. Counsel maintained that the current commercial dispute between Riverside and Kentucky Power concerns how Tariff N.U.G. applies to Riverside. Counsel argued that Riverside has a special interest in the proposed Tariff amendment because the amendment affects to whom Tariff N.U.G. will apply.

On July 26, 2017, Riverside filed a reply in support of its motion to intervene (“Reply”). In its Reply, Riverside argues that the proposed revisions to Tariff N.U.G. may significantly change the scope of the Tariff’s applicability, and thus may have a meaningful impact on Riverside and other non-utility generators. Riverside asserts that, as the only Kentucky Power customer currently served under Tariff N.U.G., Riverside has a special interest that is not adequately represented by any other party. In regard to the matter of confidential information that may be provided by Kentucky Power, Riverside states that it does not seek to gain access to Kentucky Power’s competitive information. Riverside further states that no statute, regulation, or Commission directive mandates that Kentucky Power provide all intervenors unfettered access to Kentucky Power’s confidential filings, and that Kentucky Power and Riverside could execute a non-disclosure agreement that sets forth the terms by which confidential information will be made available.

Based on the motion to intervene and hearing testimony, and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission case is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion

of the Commission.² The Court of Appeals has held that the Commission's discretion to grant or deny a motion for intervention is not unlimited, and has enumerated the limits on the Commission's discretion, with one arising under statute, the other under regulation.³ The statutory limitation, KRS 278.040(2), requires that "the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."⁴

The regulatory limitation is set forth in 807 KAR 5:001, Section 4(11)(a), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In analyzing the pending motion to intervene, we find Riverside is a customer of Kentucky Power, but has not demonstrated that it is likely to assist the Commission in rendering its decision. Therefore, Riverside lacks the necessary special interest in the rates and service of Kentucky Power sufficient to justify intervention. The only interest that Riverside has in the rates and service of Kentucky Power is as a customer with a generalized interest in Tariff N.U.G.. That interest is too remote to justify intervention here.

The Commission further finds that, if Riverside has a complaint under the existing Tariff N.U.G., it may file a complaint with the Commission pursuant to KRS 278.260.

² *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

³ *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

⁴ *Id.* at 3.

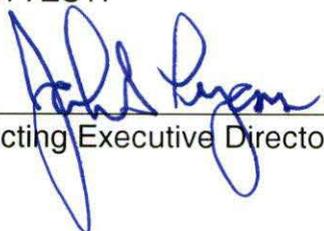
Riverside will have ample opportunity to participate in this proceeding even though it is not granted intervenor status. It can review all public documents filed in this case and monitor the proceedings via the Commission's website at the following web address: https://psc.ky.gov/PSC_WebNet/ViewCaseFilings.aspx?Case=179. In addition, Riverside may file comments as frequently as it chooses, and those comments will be entered into the record of this case. Finally, if a formal evidentiary hearing is held, Riverside will be provided an opportunity at the beginning to present any information that it wishes for the Commission's consideration in this matter.

IT IS HEREBY ORDERED that Riverside's motion to intervene is denied.

By the Commission



ATTEST:



Acting Executive Director

*William H May, III
Hurt, Deckard & May
The Equus Building
127 West Main Street
Lexington, KENTUCKY 40507

*Justin M. McNeil
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Don C Parker
Spilman Thomas & Battle, PLLC
300 Kanawha Blvd, East
Charleston, WEST VIRGINIA 25301

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Laurence J Zielke
Zielke Law Firm PLLC
1250 Meidinger Tower
462 South Fourth Avenue
Louisville, KENTUCKY 40202

*Elizabeth Sekula
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Kent Chandler
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Mark E Heath
Spilman Thomas & Battle, PLLC
300 Kanawha Blvd, East
Charleston, WEST VIRGINIA 25301

*Gregory T Dutton
Goldberg Simpson LLC
9301 Dayflower Street
Louisville, KENTUCKY 40059

*Kentucky Power Company
855 Central Avenue, Suite 200
Ashland, KY 41101

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Hector Garcia
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Kentucky Power Company
Kentucky Power Company
855 Central Avenue, Suite 200
Ashland, KY 41101

*Honorable Matthew R Malone
Attorney at Law
Hurt, Deckard & May
The Equus Building
127 West Main Street
Lexington, KENTUCKY 40507

*Jody M Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Kenneth J Gish, Jr.
Stites & Harbison
250 West Main Street, Suite 2300
Lexington, KENTUCKY 40507

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Janice Theriot
Zielke Law Firm PLLC
1250 Meidinger Tower
462 South Fourth Avenue
Louisville, KENTUCKY 40202

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Morgain Sprague
Kentucky League of Cities
101 East Vine Street
Suite 800
Lexington, KENTUCKY 40507

*Rebecca W Goodman
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Ranie Wohnhas
Managing Director
Kentucky Power Company
855 Central Avenue Suite 200
Ashland, KENTUCKY 41101

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507